

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : James E. Dowling et al. Art Unit : 1624
Serial No. : 10/552,305 Examiner : Brian E. McDowell
Filed : August 29, 2006 Conf. No. : 1899
Title : TRIAZOLOPYRAZINES AND METHODS OF MAKING AND USING THE
SAME

CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. §1.8(a)

The undersigned hereby certifies that this document is being electronically filed using the Electronic Filing System (EFS), and in accordance with §1.6(a)(4), on the 7th day of May, 2010.

/Catherine M. McCarty/

Catherine M. McCarty, Reg. No. 54,301

Commissioner for Patents

APPLICATION FOR PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. § 1.705(b)

Dear Sir:

Applicants hereby apply for Patent Term Adjustment for the above-identified U.S. Patent Application. It is Applicant's belief that the Patent Term Adjustment on the Notice of Allowance, set at 642 days, is incorrect and that the Patent Term Adjustment for which the above-identified application is entitled is **967 days**.

As required under 37 CFR § 1.705(d), this request is properly submitted within two months of the patent issue date, March 9, 2010.

Under 37 CFR § 1.702, the grounds for reconsideration of patent term adjustment include examination delays under the Patent Term Guarantee Act of 1999. The correct patent term adjustment and the bases under § 1.702, and the relevant dates as specified in § 1.703(a) through (e) for which the adjustment is sought, and the adjustment as specified in § 1.703(f) to which the patent is entitled, follows.

Under 37 CFR § 1.702(a) (hereinafter "Examination Delay"), Applicants are entitled to a period of patent term adjustment which is the sum of the following periods of delay:

(A) A period of delay of 450 days due to failure by the U.S. Patent & Trademark Office (“the Office”) to mail an action under 35 USC § 132 not later than 14 months after the actual filing date (*i.e.*, by October 29, 2007) (hereinafter “14 month Delay”) (see 37 CFR § 1.702(a)(1)). As the Office failed to mail an action under 35 USC § 132 until January 21, 2009, Applicants are entitled to a period of adjustment beginning on the day after the date that is 14 months after the date on which the above-referenced application was filed under 35 USC § 111(a), *i.e.*, October 30, 2007, and ending on the date of mailing of an action under 35 USC § 132, *i.e.*, January 21, 2009 (see 37 CFR § 1.703(a)(1)). Accordingly, the period of patent term adjustment due to the 14 Month Delay by the Office and the total period of Examination Delay under 37 CFR § 1.702(a) is 450 days, which is in agreement with the period calculated by the Office (see Patent Term Adjustment History downloaded from PAIR, submitted herewith as Exhibit A).

In addition to the patent term adjustment due to Examination Delay according to 37 CFR § 1.702(a), Applicants respectfully submit that they are also entitled to a period of patent term adjustment under 37 CFR § 1.702(b) due to failure of the Office to issue a patent within three years after the date the corresponding application was commenced under 35 U.S.C. 371(b) or (f) in an international application, *i.e.*, by October 7, 2005 (hereinafter “Three Year Delay”). The period of adjustment under 37 CFR § 1.702(b) is the number of days in the period beginning on the date after the date that is three years after the date on which the application was filed commenced under 35 U.S.C. 371(b) or (f) (*i.e.*, October 8, 2005) and ending on the date the patent issues. This period does not include any time consumed by continued examination of the application under 35 USC 132(b) as Applicants did not file a Request for Continued Examination (RCE). Applicants are thus entitled to a period of patent term adjustment beginning on the day after the date that is three years after the commencement date of the application (*i.e.*, October 8, 2008), and ending on the date that the patent issued (*i.e.*, March 9, 2010). Accordingly, the period of patent term adjustment due to the Three Year Delay by the Office is 517 days.

As set forth in 37 CFR § 1.703(f), Applicants are entitled to a period of patent term adjustment equal to the period of delays based on the grounds set forth in 37 CFR § 1.702

(hereinafter "Office Delay") reduced by the period of time equal to the period of time during which Applicants failed to engage in reasonable efforts to conclude prosecution pursuant to 37 CFR § 1.704 (hereinafter "Applicant Delay"). With respect to the above-referenced application, the total period of Office Delay is the sum of the period of Examination Delay (450 days) and the period of Three Year Delay (517 days) *to the extent such periods of delay are not overlapping*. As the period of 14 Month Delay ended October 29, 2007, prior to the first day of the period of the Three Year Delay, *i.e.*, October 8, 2008, Applicants submit that these periods are not overlapping. Accordingly, Applicants submit that the total period of Office Delay is 967 days, which is the sum of the period of the 14 Month Examination Delay (450 Days) and the period of Three Year Delay (517 days).

Under 37 CFR § 1.703(f), to calculate the period of patent term adjustment, the total period of Office Delay is reduced by the period of Applicant Delay as specified in 37 CFR § 1.704. The USPTO has calculated the period of Applicant delay to be 0 days (see Exhibit A). Applicants agrees with this calculation and submit that the period of Applicant delay should be 0 days.

Under 37 CFR § 1.703(f), the period of patent term adjustment is the period of Office Delay reduced by the period of Applicant Delay. Accordingly, Applicants submit that the correct patent term adjustment for the above referenced application is 967 days, which is the difference between the total period of Office Delay (967 days) and the period of Applicant Delay (0 days).

In view of the foregoing it is respectfully requested that this Request for Reconsideration of Patent Term Adjustment be favorably considered and that a corrected Determination of Patent Term Adjustment be issued to reflect a patent term adjustment of 967 days.

The above-identified patent is not subject to a terminal disclaimer.

Pursuant to 35 USC § 154(b)(4)(A), Applicants reserve the right to file a civil action against the Director in the United States District Court for the District of Columbia should the Director deny the present request for revision of patent term adjustment.

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In accordance with 37 CFR § 1.705(b)(1), please charge the fee of \$200 as required under 37 CFR § 1.18(e), and any other necessary charges, or any credits, to Deposit Account No. 50/2762, referencing Attorney Docket No. B2047-7036US.

Respectfully submitted,

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